

State of Arizona  
COMMISSION ON JUDICIAL CONDUCT

---

Disposition of Complaint 06-212

---

Complainant: No. 1292710514A

Judge: No. 1292710514B

---

**ORDER**

The commission reviewed the complaint filed in this matter and found no ethical misconduct on the part of the judge. A sitting judge or magistrate may use the word "keep" in campaign advertisements, whether he or she is elected or appointed.

The complaint is dismissed pursuant to Rule 16(a).

Dated: September 21, 2006.

FOR THE COMMISSION

/s/ Keith Stott  
Executive Director

Copies of this order were mailed to the complainant and the judge on September 21, 2006.

*This order may not be used as a basis for disqualification of a judge.*

AUG 08 2006

CJC-06-212

August 6, 2006

Commission on Judicial Conduct  
1501 W. Washington, #229  
Phoenix, AZ 85007

Re: Conduct of Judge [REDACTED]  
Misrepresentation of status

Dear Members of the Commission:

Judge [REDACTED] and I are both candidates who have filed for the [REDACTED] Primary election to determine the party's ultimate candidate for [REDACTED] for the November 2006 Election. As you know, [REDACTED] is filling a vacant position for the [REDACTED] which was vacated by [REDACTED]

Recently [REDACTED] has placed several campaign signs that read "KEEP JUDGE [REDACTED] YOUR [REDACTED] JUSTICE OF THE PEACE." The signs have been placed throughout the [REDACTED] Precinct. The Commission has jurisdiction over [REDACTED] since he is serving as a judge until the vacant position is filled.

Cannon 5B.d.ii states that a candidate shall not "knowingly misrepresent the ... present position of the candidate." In this situation, [REDACTED] has knowingly used the words "KEEP" and "YOUR [REDACTED] JUSTICE OF THE PEACE" to knowingly misrepresent his present position as an elected official. [REDACTED] has never been elected to a Justice of the Peace position let alone being elected as the [REDACTED] Justice of the Peace.

Although [REDACTED] is filling the position of [REDACTED] Justice of the Peace, the position of [REDACTED] Justice of the Peace is a vacant position. A.R.S. 16-101, et. Sec. 16-314(D), and 16-230(A)(2) have defined and established that the term which was vacated by [REDACTED] is now vacant and the persons running for that position are running to fill an unexpired vacant term.

A.R.S. 16-230(A)(2) applies to county offices which have been vacated. It states that if "the vacancy occurs within the first 2 years of the term and before the date which the nomination paper is required to be filed as prescribed by A.R.S. 16-311, a primary election shall be held as otherwise provided by law to determine candidates to fill the unexpired term." If the vacancy occurred after 2 years, then the County may appoint someone to complete the term. Therefore, [redacted] is not an elected incumbent judge. His signs which state "KEEP Judge [redacted]" and "YOUR [redacted] JUSTICE OF THE PEACE" will mislead the public into believing he is the now elected justice of the peace. He is not the elected incumbent judge because it is a vacant position by statute.

The words "KEEP" and "YOUR [redacted] JUSTICE OF THE PEACE" will mislead voters into thinking that [redacted] was elected to the position as [redacted] Justice of the Peace. The statute A.R.S. 16-230(A)(2) clearly states that it is a vacant position that will be filled after the General Election in November. It therefore indicates that the use of the word "KEEP" and "YOUR [redacted] JUSTICE OF THE PEACE" by [redacted] will mislead the voters into assuming he was elected into that position. [redacted] should be made to cover the word "KEEP" and "YOUR" to avoid misrepresenting his position and misleading the voters.

Because of the obscure nature of the position of Justice of the Peace and the fact that I am running for the [redacted] Justice of the Peace the voters of the [redacted] Precinct are being and will continue to be misled to believe that [redacted] is an elected official.

The advantages of incumbency are real. Perceived elected incumbency in this situation causes [redacted] Precinct voters into believing that [redacted] had won a prior election. His conduct is an intentional effort to confuse the voters of the [redacted] Precinct as to his current status designed to enhance his prospects of prevailing in the September 12, 2006 Primary election.

Because of the irreparable harm this misrepresentation can cause, I am respectfully requesting that this matter be investigated in as accelerated and expedited manner and that if confirmed, a cease and desist order be directed to candidate [redacted] to remove or at least cover up the misleading "KEEP" and "YOUR" [redacted] Justice of the Peace on his signs and on any other campaign materials which include the misleading representation along with any other appropriate action the Commission deems is warranted.

I trust that the Commission will recognize that this matter is deserving of prompt action to prevent a clear and continuous violation of Cannon 5. The facts of this matter are not disputable. The existence of the signs can be confirmed by an investigator driving anywhere in the [redacted] Justice Precinct.

CJC-06-212

I would respectfully request that after review by your investigators and receipt of the response for [redacted] a telephonic conference of Commission members be scheduled if the next regular Commission meeting would not be timely enough to order remedial action before the signs confuse more Primary election voters prior to the Primary Election on September 12, 2006. The fact that early balloting will begin well in advance of September 12, 2006 makes this matter particularly urgent.

Sincerely,

[redacted]